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Public Disclosure Commission

STATE OF WASHINGTON

PUBLIC DISCLOSURE COMMISSION

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DECLARATORY ORDER NO. 5a

INITIATIVE CAMPAIGN RECEIVING FREE AIR TIME (RCW 42.17.020(10); WAC 390-05-210; a contribution may result when a broadcaster provides free air time or air time at a reduced rate to an initiative campaign.

INTRODUCTION

In October, 1988, the Honorable Ruth Fisher, Representative, 27th District and Michael E. Kipling, Attorney for Fisher Broadcasting Inc. petitioned for a declaratory ruling regarding whether free broadcasting time which is provided by television and radio broadcasters pursuant to the "Fairness Doctrine" adopted by the Federal Communications Commission ("FCC") is a contribution as defined by RCW 42.17.020(10). Pursuant to this petition, the Public Disclosure Commission ("PDC") on December 13, 1988, issued Declaratory Ruling No. 5, which is attached hereto and made a part of this order. In that ruling, the PDC decided that if a broadcaster provided free air time to an initiative campaign as a result of a good faith decision by the broadcaster when advised by counsel that the Fairness Doctrine required such action, then this action did not constitute a contribution within the meaning of RCW 42.17.020(10).

"The public's right to know of the financing of political campaigns and lobbying and the financial affairs of elected officials and candidates far outweighs any right that these matters remain secret and private."

RCW 42.17.010 (10)

Declaratory Ruling No. 5 points out that the Fairness Doctrine may be modified or eliminated by the FCC. Therefore, it stated that

. . . readers should be cautious in applying this ruling to situations that may arise in the future.

The future has arrived and the FCC has repealed its decision to apply the Fairness Doctrine to ballot issues.

FACTUAL BACKGROUND

On January 6, 1992, the FCC released a Memorandum Opinion and Order in the case of The Arkansas AFL-CIO and The Committee Against Amendment 2 Against Television Station KARK-TV, Little Rock, Arkansas, Case No. FCC 91-434. The case arose out of a complaint, filed November 2, 1990 by the complainants against KARK-TV. The complainants alleged that KARK-TV failed to give opponents of Amendment 2, a ballot issue before the electorate in the November 6, 1990 election, adequate coverage as required by the Fairness Doctrine. The complainants asked the FCC to rule that KARK-TV must comply with the fairness doctrine and failed to do so in their coverage of Amendment 2 and rescind its previous ruling that the fairness doctrine is unconstitutional.

In its decision, the FCC ordered that the complaint against KARK-TV be denied. The FCC denied the petition because it found that the fairness doctrine chilled broadcaster's speech with respect to ballot issues. Based on this finding, the FCC repealed the fairness doctrine and will therefore no longer enforce it.

ANALYSIS

The analysis set forth in Declaratory Ruling No. 5 remains unchanged. However, this analysis must now be applied to a new set of facts.

Broadcasters are no longer required to provide free air time to initiative campaigns in order to comply with the Fairness Doctrine. Therefore, when a broadcaster now does provide free air time for the purpose of communicating political advertising, to an initiative campaign it will be considered a contribution. Programming time devoted by a broadcaster to coverage of a campaign or the issues or personalities involved in the form of news, feature, editorial, public affairs or similar programming is not a contribution within the meaning of the Public Disclosure Act.

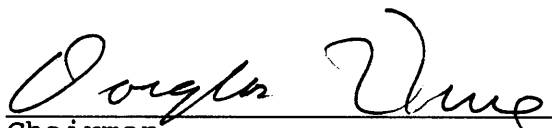
We are mindful of a broadcaster's obligation to broadcast in the "public interest" and to broadcast controversial issues. Failure to do so can place a broadcaster's license in jeopardy at the time of renewal. However a broadcaster may meet this obligation in a variety of ways, e.g., news, stories, editorials, and broadcasting public debate. The broadcaster is not legally mandated to provide free air time or air time at a reduced rate in order to meet this obligation. Therefore, the "public interest" standard, standing alone, would not support an argument that such campaign assistance was not a reportable contribution.

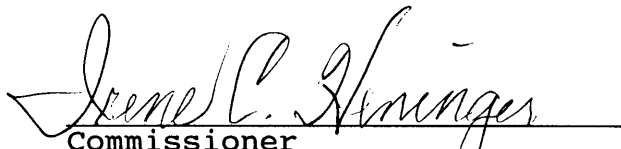
Again, this is a fluid situation which is subject to change by the FCC. As changes are adopted, our ruling may also change.

CONCLUSION

We therefore hold that air time provided without charge in advocacy of a ballot issue may constitute a contribution within the meaning of RCW 42.17.020(10) and is subject to the reporting requirements and limitations set forth in Chapter 42.17 RCW if there is no legal compulsion to so provide the air time and the action can be deemed voluntary.

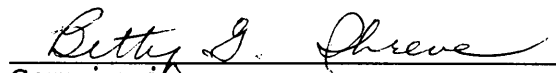
Dated this 24th day of March, 1992.


Chairman

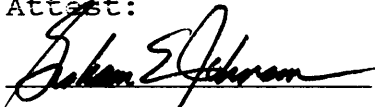

Commissioner


Commissioner


Commissioner


Commissioner

Attest:


Executive Director
Title